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In the Supreme Court of the United States

No. 768

OCTOBER TERM, 1961.

LOCAL UNION 760; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

Petitioner,

vs.

DR. J. W. PRESLEY, FRED CHANIOTT, GORDON POWELL, CLARENCE E. FARRIS and MORRIS GOLDSTEIN, Composing the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals For the Sixth Circuit.

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TABLE OF CONTENTS.

Opinions Below	1
Jurisdiction of This Court	2
Questions Presented	2
Statute Involved	3
Statement of Facts	3
Reasons for Granting the Writ	5
Conclusion	11
Appendix. Order of the United States Court of Appeals for the Sixth Circuit	12

TABLE OF AUTHORITIES.

Cases,

Anderson v. U. S. Civil Service Commission, 119 F. Supp. 567	9
Delaney v. Carter Oil Company, C. A. Okl. 1949, 147 F. 2d 314, cert. den. 70 S. Ct. 71, 338 U. S. 824, 94 L. Ed. —	10
TVA v. Lenoir City, 72 Fed. Supp. 457	5
U. S. v. Menasche, 75 S. Ct. 513, 348 U. S. 528; 99 L. Ed. 615	9

Statutes.

16 U. S. C. A. 831(b)	2, 3, 4, 5, 6, 7, 8, 9, 10
28 U. S. C. A. 2201	2, 3, 10

Federal Rules of Civil Procedure.

Rule 12	4

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Respondents.

PETITION FOR WRIT OF CERTIORARI To The United States Court of Appeals For the Sixth Circuit.

To the Honorable Chief Justice and Associated Justices of the Supreme Court of the United States:

Petitioner, Local Union 760, International Brotherhood of Electrical Workers, prays for the issuance of Writ of Certiorari to review the judgment of the Court of Appeals for the Sixth Circuit, affirming the judgment of the District Court for the Eastern District of Tennessee, Southern Division.

OPINIONS BELOW.

The memorandum opinion of the District Court for the Eastern District of Tennessee, Northern Division is set out in the Record, page 5a. The Order Sustaining Motion to Dismiss of the District Court for the Eastern District of

Tennessee, Northern Division is set out in the Record, page 8a. (Nine extra copies of the appendix Record below are filed herewith.)

Order of the Circuit Court of Appeals is set out in the appendix hereto, at page 12.

JURISDICTION OF THIS COURT.

The order and judgment of the Circuit Court of Appeals is dated December 5, 1961. The petitioner here filed its Bill of Declaratory Judgment in the United States District Court on May 10, 1960.

The jurisdiction of this Court is based on the laws of the United States as set forth in 16 U. S. C. A. 831.

This is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties.

QUESTIONS PRESENTED.

1. Does a United States District Court have jurisdiction based on the law of the United States as set forth in 16 U. S. C. A. 831, in an action for a declaratory judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining an actual controversy between the parties?

2. Is a public electric plant, which becomes a part of the TVA system, and purchases or obtains TVA power by contract, and thus becomes a distributor of TVA electrical energy, bound to pay its "laborers or mechanics" no less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity in the construction, alteration, maintenance or repair of building dams, locks or other projects as provided for by 16 U. S. C. A. 831?

STATUTE INVOLVED.

The relevant portions of 16 U. S. C. A., Section 831(b). are as follows;

> "All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks and other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."
>
> * * *
>
> "Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract."

STATEMENT OF FACTS.

This Bill For Declaratory Judgment (R. 2a) among other things alleges:

That the jurisdiction of this Court is based on the laws of the United States as set forth in 16 U. S. C. A. 831.

That this is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

That the Congress of the United States, by the enactment of 16 U. S. C. A. 831, created and established the Tennessee Valley Authority, hereinafter referred to as the TVA, and, among other things, provided for a system for the distribution of electrical power. 16 U. S. C. A. 831 (b), among other things, provides,

> "all contracts to which the Corporation (TVA) is a party and which require the employment of laborers and mechanics in the construction, alteration, mainte-

nance, or repair of buildings, dams, locks or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."

Thereafter in order to become a part of the TVA system, that is, in order to purchase or obtain TVA power and thus become a distributor, the City of LaFollette purchased certain then existing electrical facilities owned and then being operated by the Commonwealth and Southern Corporation. Following this purchase the City of LaFollette, by ordinance, authorized by "The Municipal Electric Plant Act," now found at TCA Sec. 6-1505 et seq., created the defendant, Board of Public Utilities.

That all acts of the City of LaFollette as set forth in paragraph four thereof and/or the Board are inextricably interwoven with the acts of the United States Congress as set forth in 16 U. S. C. A. 831 so as to form the TVA system.

Thereafter the TVA and the Board entered into a contract in conformity with 16 U. S. C. A. 831 whereby the Board became a unit in the TVA system necessitating the employment of a large number of laborers and mechanics within the meaning of 16 U. S. C. A. 831b as set forth in the third paragraph hereof.

That the Board employs a large number of laborers, mechanics and otherwise who are members of the plaintiff labor union. That the Board is not now, nor has it ever, complied with 16 U. S. C. A. 831b as set forth in the third paragraph hereof, and the Board refuses to discuss with the plaintiff the applicability of or compliance with 16 U. S. C. A. 831.

Thereafter in accordance with Rule 12 of the Federal Rules of Civil Procedure, the defendants filed a Motion to

Dismiss (R. 4a). This Motion was, by the Court, granted, a Memorandum Opinion, and an Order pursuant thereto duly entered (R. 5a, 8a). The Court's Memo Opinion, among other things stated:

> "* * * that it did not have jurisdiction of the case.
>
> * * *
>
> Obviously, 831(b) relates only to government contracts for construction, maintenance, etc., on TVA properties, which contracts necessarily involve the employment of laborers and mechanics. The Utility Board undoubtedly did need laborers and mechanics to obtain its system for the distribution of power purchased from TVA. But the responsibility for maintaining its own system is one thing: and a contract with a government agency for maintenance of a government property is something else. * * *"

This appeal was, thereafter, duly perfected.

REASONS FOR GRANTING THE WRIT.

Your petitioner assigns the following reasons for granting the writ:

1. 16 U. S. C. A. 831b has not been construed insofar as we have been able to find, except by the Trial Court and the Court of Appeals in this cause.

2. The respondents are effectively neutralizing the intent of Congress, they are using discriminatory practices and they are paying their laborers and mechanics substandard wages in violation of 16 U. S. C. A. 831b.

It has been held that TVA has the right and is authorized by the TVA Act to set the resale rates and obligate, by contract, municipalities and others to dispose of revenues from an electric system in accordance with the provisions thereof, and that this is the uniform practice. *TVA v. Lenoir City*, 72 Fed. Supp. 457.

We submit that TVA cannot set a fair, reasonable and just rate for electric energy to the consumer without taking into consideration the cost of labor. Therefore, we say that TVA is assuming that these respondents are paying the prevailing rate of wages when it sets the rate to be charged the ultimate consumer of the electric energy. We further submit that Congress did not intend that these distributors would make a return like a Commonwealth Edison Company or Sam Insull Company—the very evil which helped to bring TVA into existence.

It is undisputed that:

1. The TVA and the respondents entered into a contract in conformity with 16 U. S. C. A. 831b whereby the Board became a unit in the TVA system.

2. That the respondents engage in the construction, alteration, maintenance or repair of buildings, dams, locks or other projects as set out in 16 U. S. C. A. 831b.

3. That the respondents employ large numbers of laborers and mechanics within the means of 16 U. S. C. A. 831b.

The question is whether this activity on the part of the respondents comes within the meaning of 16 U. S. C. A. 831b or as the learned Trial Judge reasoned from reading 16 U. S. C. A. 831b, that it obviously relates only to government contracts for construction, maintenance, etc., on TVA properties.

The plain meaning of the words of this statute clearly brings the petitioner within its purview, as it reads as follows:

> "All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks and other

projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."

To resolve this, one must look to the intent of Congress' judicial interpretations of it or similar provisions and the degree of executive enforcement. It may be well to note that the president of the United States just recently set up a new executive committee packed with enforcement sanctions to bar racial discrimination in government by private firms doing business with the government. Furthermore, there is no case or judicial opinion which spells out a contrary or different interpretation than that propounded by the petitioner.

From all of this, it would appear a proper construction of 16 U. S. C. A. 831b to be directly concerned with the wide-spread existence of sub-standard wages, hours, working conditions and discriminations. Congress clearly intended, by this legislation, to raise living standards and to eliminate the payment of wages to labor which are less than "prevailing rate of wages for work of a similar nature prevailing in the vicinity," by the passage of this Act.

When Congress sought to unshackle that great giant, at Muscle Shoals to revolutionize the power problem, to permit the humblest family to avail itself of electricity at a reasonable rate, and to raise the Tennessee Valley by its boot straps, it had labor in its mind, in its heart and on its lips. Excerpts are taken from the Congressional record of April and May 1933, as follows:

Congressman Taylor at page 2199:

"I say unto you that with this great development East Tennessee will not only be the Ruhr of the United States but it will also be the Eden of America."

Congressman Mitchell at page 2253:

"No longer will the men without a job be walking the highway in search of work. He can and will get employment and become again self sustaining. The purchasing power of the people will be restored and the normal prosperity once again reign."

Congressman Britton at page 2266 speaks of "harnessing the Tennessee River" and "put it to use for the benefit of humanity."

Congressman Snyder at page 2273:

"I am for this bill because I see in it much relief for the farmer, the laborer and the little business man."

In addition to all of the above it is set out in the bill for Declaratory Judgment that all acts of the City of LaFollette and/or the Board are inextricably interwoven with the acts of the United States Congress as set forth in 16 U. S. C. A. 831 so as to form the TVA system. To substantiate this it must be noted that the respondents can only purchase power from the TVA, and that in so doing it is common knowledge that they must and do agree, and this provision is contained in every power contract concerning use of lines for transmission purposes as follows:

"TVA is hereby granted the privilege of using any electric line of the Municipality * * * for the purpose of transmitting electric energy betewen adjoining portions of TVA's facilities or to other customers of TVA."

This can only mean that the electric energy in the respondents transmission lines are also flowing into the circuits of their customers in their service area as well as other facilities and customers of the TVA. The respondents' service area encompasses certainly more than the City of LaFollette and undoubtedly extends into adjoining

counties. Some service areas of Municipalities even extending beyond state boundaries.[1]

We say that the respondent board owes a duty to the whole of the service area in which it operates not just to the City of LaFollette. In our judgment it is not fair, and is unlawful, for the respondents to pay sub-standard wages which result in high returns to the benefit of the City of LaFollette only, not to its service area.

The cardinal principle of statutory construction is to save and not destroy. *U. S. v. Menasche*, 75 S. Ct. 513, 348 U. S. 528; 99 L. Ed. 615. The Court should construe law in harmony with legislative intent and seek to carry out the legislative program. *Anderson v. U. S. Civil Service Commission*, 119 F. Supp. 567.

In its second paragraph U. S. C. A. 831(b) sets out that "All contracts to which the Corporation is a party" shall provide for the payment of the prevailing rate of wages, this section cannot be held to mean all contracts except contracts entered into between the Corporation and the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee. Had Congress so intended such an exclusion, it would have stated the exclusion in express language. Of course, it is undisputed that the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee, obtains electrical power by con-

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[1] In the hearing before a subcommittee of the committee on public works U. S. Senate 84th Congress, first session on S. 2373 on July 21, 22 and 27, 1955, at page 162 Mr. S. R. Finley, General Supervisor of the Electric Power Board of Chattanooga, stated "our Electric Power Board of Chattanooga, is the largest distributor of TVA produced power. We serve an area of some 500 square miles part of which is in the State of Georgia, and which there are some 240,000 people. About ½ of our 75,000 customers are within the City of Chattanooga and ½ outside of it. Some 5,000 customers are in the State of Georgia closely adjacent to Chattanooga."

tract from the Tennessee Valley Authority. Therefore, the defendants' contract with the Tennessee Valley Authority comes squarely within the provisions of 16 U. S. C. A. 831(b). The respondents who comprise the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee are obligated and directed by an Act of Congress, 16 U. S. C. A. 831(b), to pay their employees in the construction, alteration or repair of buildings, utility lines and otherwise, used in their operations, the prevailing rate of wages for work of a similar nature prevailing in the vicinity. This they failed to do and because of this failure they are subject under the provisions of 16 U. S. C. A. 831(b). This is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties.

The purpose of a declaratory procedure is to remove uncertainty from legal relations and to clarify, quiet and stabilize them before irretrievable acts have been undertaken, and also to enable an issue of questioned status or fact, on which a whole complex of rights may depend, to be expeditiously determined. *Delaney v. Carter Oil Company*, C. A. Okl. 1949, 147 F. 2d 314, cert. den. 70 S. Ct. 71, 338 U. S. 824, 94 L. Ed.—.

Certainly there can be no justificable controversy where the persons suing have suffered no legal detriment, however, when as in this case an Act of Congress gives the plaintiff a right and when that right is violated there arises a cause of action. The plaintiff's claim is not moot, hypothetical or abstract but rather a substantial one which could easily be reduced to a monetary sum by the application of simple mathematics.

CONCLUSION.

Wherefore, for the reasons set forth above it is respectfully submitted that this Petition for Writ of Certiorari should be granted and that the opinions and judgments of the Circuit Court of Appeals and the District Court should be reversed and this cause ordered remanded to the District Court, with directions to reinstate the cause upon the docket and let the defendant answer, and the cause tried upon the merits as sought by the original complaint.

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Of Counsel.

APPENDIX.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(December 5, 1961.)

Before WEICK and O'SULLIVAN, Circuit Judges, and DARR, Senior U. S. District Judge.

THE ABOVE CAUSE having come on to be heard upon the record, the briefs of the parties, and arguments of counsel, and on due consideration thereof, and upon consideration of the memorandum of the District Judge who granted the defendants' motion to dismiss the above cause,

IT IS ORDERED AND ADJUDGED that the judgment and order of the District Court dismissing the above cause be, and it is, hereby affirmed.

Approved for entry,

CLIFFORD O'SULLIVAN,

United States Circuit Judge.

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Respondents.

RESPONDENTS' BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

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INDEX

	Page
Statement of the case	1
Argument	4
Discussion of question one—The complaint was dismissed for failure to state a claim under 16 USC 831b upon which relief may be granted. The dismissal, therefore, does not give rise to the jurisdictional issue expressed in question one	4
Discussion of question two—The District Court and Court of Appeals correctly determined that 16 USC 831b does not apply to laborers and mechanics employed by the LaFollette Board of Public Utilities	5
Appendix	10

Cases Cited

Bell v. Hood, 327 U. S. 678, 682 4

Webb v. Board of Trustees of Webb School, 38 Tenn. App. 173, 198, 271 S. W. 2d 76 (1954) 6

Statutes Cited

Tennessee Code Annotated, Sec. 6-1501 et seq., Chapter 32, Public Acts of Tennessee 1935 (The Municipal Electric Plant of 1935) 1, 10

Tennessee Valley Authority Act of 1933, 16 USC 831 et seq. 2, 3, 4, 5, 6, 7, 8

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Respondents.

RESPONDENTS' BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF THE CASE.

The City of LaFollette, Tennessee, owns an electric power distribution system which serves residents of LaFollette and adjacent areas. The system is operated by a Board, the members of which have been sued in this action.[1]

[1] Provision for the Board was made by an ordinance authorized by Chapter 32, Public Acts of Tennessee, 1935 ("The Municipal Electric Plant Act of 1935"), Tennessee Code Annotated, 6-1501 et seq. (The Complaint, paragraph IV, R3a.) The material provisions of this Act are set forth in appendix I to this brief.

To carry out its functions the Board entered into a contract with TVA whereby the Board purchases electricity for distribution and sale.

On May 10, 1960, petitioner, a labor union, some of whose members, it is alleged, are employed by the Board, filed a bill for declaratory judgment (R2-4a) in the United States District Court for the Eastern District of Tennessee in which it sought to have the District Court construe 16 USC 831b, a section of the Tennessee Valley Authority Act of 1933, 16 USC 831, et seq., and declare the rights and obligations of the parties thereunder. The relevant part of section 831b provides as follows:

> "All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks and other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."
>
> . . . . . .
>
> "Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract."

Petitioner's thesis is that because the Board purchases electric current from TVA it thereby becomes "a unit of the TVA system" and that the Board's acts are thereby "inextricably interwoven with the acts of the United States Congress as set forth in 16 USCA 831 so as to form the TVA system." (Complaint, paragraphs V and VI, R3a). This in turn is averred to require compliance by the Board with the prevailing wage provision of 16 USC 831b.

In response the Board filed a motion to dismiss (R4-5a) which the District Court sustained. In its memorandum

(R5-7a) the District Court said: "Obviously section 831b relates only to government contracts for construction, maintenance, etc., on TVA properties, which contracts necessarily involve the employment of laborers and mechanics", and not to laborers and mechanics employed by the Board ". . . to maintain its system for the distribution of power purchased from TVA." The District Court's order recites that "the Court has no jurisdiction of this action and that no claim upon which relief can be granted has been stated under said (16 USC 831b) statute" (R8a).

On appeal the United States Court of Appeals for the Sixth Circuit affirmed the dismissal of the case by order dated December 5, 1964. This order is reported in 296 F. (2d) 731.

ARGUMENT.

Petitioner asks that two questions be reviewed: (1) Did the District Court "have jurisdiction based on . . . 16 USCA 831, in an action for a declaratory judgment . . .", and (2) Does 16 USC 831b apply to "laborers and mechanics" employed by a municipal electric plant by reason of the fact that the municipal electric plant contracts with TVA for the purchase of power, which power the municipal plant sells and distributes.

Discussion of Question One.

The Complaint Was Dismissed for Failure to State a Claim Under 16 USC 831b Upon Which Relief May Be Granted. The Dismissal, Therefore, Does Not Give Rise to the Jurisdictional Issue Expressed in Question One.

The District Court in the course of its memorandum opinion states that "The Court announced from the bench that it did not have jurisdiction of the case" (R5a). The District Court's order dismissing the action contains the statement "that the Court has no jurisdiction of this action" (R8a). These statements have evidently prompted respondent to raise the jurisdictional issue stated in Question One.

However, the District Court's memorandum opinion and the order thereon, which are briefly referred to above, clearly show by express recitals that the District Court dismissed the case on the ground that 16 USC 831b does not afford petitioner a basis for judgment—that is, on the merits of the case—and not for lack of jurisdiction.[2]

[2] See Bell v. Hood, 327 U. S. 678, 682, where it is said: "whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed juris-dic-

This being true, Question One does not state an issue of present relevance to the case.

Discussion of Question Two.

The District Court and Court of Appeals Correctly Determined That 16 USC 831b Does Not Apply to Laborers and Mechanics Employed by the LaFollette Board of Public Utilities.

Section 831b spells out with precision the area within which the "prevailing wage" provision is operative. By the terms of section 831b, the prevailing wage provision must be construed to apply only when "laborers and mechanics" of the contracting party are performing work relative to ". . . buildings, dams, locks or other projects . . ." **operated by or to be operated by TVA.** The fourth paragraph of section 831b requiring payment of the prevailing wage when "work . . . is done directly by the corporation" does not admit of the construction contended for by petitioner. The language of this paragraph manifests Congress' recognition that the work contemplated by section 831b could be done in one of two ways — by the TVA itself or by an independent contractor. These alternative methods can have no relevance to the work of city owned agencies which distribute TVA's "surplus power" sold to them under the authority of 16 USC 831i, for this type of work, under the plan of the statute, could never be work "done directly by the Corporation."

Section 831b, moreover, applies only when laborers and mechanics are performing one of the functions described in the statute. Hence, if a laborer or mechanic is not engaged in constructing, altering, maintaining or repairing

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tion over the controversy. *If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction . . .*" (Emphasis ours.)

a building, dam, lock or similar project,[3] the wage provision has no application. "No intimation was made", said the District Court (R7a), that the Board's employees were engaged in the required work, nor can the complaint be so construed. To the contrary, as appears from the complaint, the petition and Tennessee Code Annotated 6-1503, the statute pleaded by petitioner and under which the creation of the Board was authorized, the Board's employees are only engaged in work incident to the retail distribution of electricity.

The petitioner repeatedly states that the Board's contract with TVA was entered into in conformity with section 831b. This insistence ignores 16 USC 831i, which plainly is the relevant section of the TVA act in this instance, inasmuch as it governs TVA's sales of electricity to municipalities and similar organizations.[4]

Section 831i sets forth in detail the terms and conditions upon which such sales can be made, but, significantly, it contains no express reference to any wage requirement, much less to a requirement that the contracting municipality pay its employees the prevailing wage as determined by the Secretary of Labor. In the absence of such a provision in section 831i of the Act, it must be concluded that Congress did not condition the sale of TVA power to municipalities upon the requirement that the contracting municipality pay its employees a prevailing wage.

Petitioner argues that since TVA is authorized to regulate the resale rate of power sold to municipalities it must

[3] Under the rule of ejusdem generis, the term "project", as used in the second paragraph of 16 USCA 831b, relates to projects similar to those specifically designated in the statute, i. e., "buildings, dams, locks". For a statement of this familiar rule, see e. g. Webb v. Board of Trustees of Webb School, 38 Tenn. App. 173, 198, 271 S. W. 2d 6 (1954).

[4] 16 USC 831i is set forth as appendix 2 to this brief.

also have the right to regulate the wages of employees of the municipalities to whom power is sold. This conclusion is unsound. TVA may indeed establish resale rate schedules as a part of its power contracts with municipalities, but it may do so only because of the clear authorization of section 831f. There is, however, no such corollary provision in section 831i (or for that matter in section 831b) which gives TVA the additional right to regulate the wages of the municipality's employees. The statute expressly permits the regulation of resale rates but not of wages.

Section 831i contains the provision ". . . That the Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Chapter . . ." Neither the statute itself nor the legislative history gives credence to the view that the power to establish "terms and conditions" in a power contract was intended by Congress to grant TVA the right to control the wages of the Board's employees. But even if this vague language were construed to evince such an intent, the petitioner here cannot avail itself of this section because its complaint does not aver that TVA invoked that power in contracting with the Board.[3]

Petitioner errs in its statement (pages 9-10) that it is "undisputed" that the Board's contract with TVA is, ". . . squarely within the provisions of 16 USCA 831 (b)" for this is the essence of the dispute. This dispute exists solely because petitioner has refused to give meaning to

[3] Petitioner's references to discrimination on pages 5 and 7 of its petition are misleading and unwarranted. Discrimination is not an issue in this case. Until the filing of this petition, discriminatory practices and racial discrimination had never been mentioned or even alluded to in the pleadings or briefs of either party.

section 831b in its entirety and because of petitioner's refusal to read it in context with section 831i. Throughout the history of this case petitioner has consistently ignored section 831i and instead has concentrated its efforts on giving section 831b an elliptical construction. This is illustrated on pages 9-10 of the petition where it is said by clear implication that the phrase "All contracts to which the Corporation is a party . . ." should be construed in isolation from the rest of the sentence. This method of construction omits any reference to the significant words which modify the phrase "all contracts".

The legislative history of the TVA Act discloses nothing which supports the petitioner's position. Petitioner's references to statements of Congressmen are not germane. To our knowledge the only reference to section 831b's prevailing wage provision in the legislative history is contained on page 10 of the House of Representative's Majority Report, submitted on April 10, 1933, by Congressman McSwain to accompany HR 5081. The report says:

> "In like manner all agents, employees, and laborers will be entitled to have the Secretary of Labor settle any dispute concerning wages. The prevailing rate of wages, as it is defined in the act, will be the measure of wages paid [to TVA employees]. The same principle will apply to employees and laborers working for **contractors** upon **projects** under contract with the Authority" (Emphasis added).

The language supports our contention that the prevailing wage clause of section 831b relates only to employees of companies which have contracts with TVA for the construction and maintenance, etc., of projects which are owned and operated by TVA.

The Court of Appeals properly affirmed the action of the District Court in dismissing petitioner's complaint.

and no significant question is presented by the petition. Accordingly, respondents pray that the petition for writ of certiorari be denied.

Respectfully submitted,

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APPENDIX 1.

Material Portions of Tennessee Municipal Electric Plant Law of 1935 as Contained in Tennessee Code Annotated.

"**Section 6-1503. Powers of municipalities.**

"(a) To acquire, improve, operate and maintain within and or without the corporate or county limits of such municipality, and (with the consent of such other municipality) within the corporate or county limits of any other municipality, and electric plant and to provide electric service to any person, firm, public or private corporation, or to any other user or consumer of electric power and energy and to charge therefor.

"(g) To make contracts and execute instruments containing such covenants, terms and conditions as in the discretion of the municipality may be necessary, proper or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any federal agency; to make all other contracts and execute all other instruments as in the discretion of the municipality may be necessary, proper or advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service; and to carry out and perform the covenants and terms and conditions of all such contracts and instruments.

"**Section 6-1507. Creation of board.** Any municipality, excepting those which employ a city manager or which have a population of less than two thousand (2,000), issuing bonds under the provisions of §§ 6-1501–6-1534 for the

acquisition of an electric plant shall, and any municipality now or hereafter owning or operating an electric plant under §§ 6-1501–6-1534, or any other law, may appoint a board of public utilities (hereinafter called the 'board').

"**Section 6-1514. General control of plant.** The general supervision and control of the acquisition, improvement, operation and maintenance of the electric plant shall be in charge of the following agency (hereinafter referred to as the 'supervisory body'): The Board, or if there be no Board, then the governing body of the municipality.

APPENDIX 2.

Tennessee Valley Authority Act:

"Section 831i. Sale of surplus power; preferences; experimental work; acquisition of existing electric facilities.

"The Board is empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the Board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the Board it shall give preference to States, counties, municipalities and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members: **Provided**, That all contracts made with private companies or individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the Board to cancel said contract upon five years' notice in writing, if the Board needs said power to supply the demands of States, counties or municipalities. In order to promote and encourage the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the Board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable; **provided further**, That the Board is authorized and directed to make studies, experiments and determinations to promote the wider and better use of electric power

for agricultural and domestic use, or for small or local industries, and it may cooperate with State governments, or their subdivisions or agencies, with educational or research institutions, and with cooperatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region: **Provided further**, That the Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this chapter, and in case the purchaser shall fail to comply with any such terms and conditions, or violate any such rules and regulations, said contract may provide that it shall be voidable at the election of the Board: **Provided further**, That in order to supply farms and small villages with electric power directly as contemplated by this section, the Board in its discretion shall have power to acquire existing electric facilities used in serving such farms and small villages: **And provided further**, That the terms 'States,' 'counties' and 'municipalities,' as used in this chapter shall be construed to include the public agencies of any of them unless the context requires a different construction. May 18, 1933, c. 32, § 10, 48 Stat. 64; Aug. 31, 1935, c. 836, § 6, 49 Stat. 1076."